

FACT SHEET
Consolidation Coal Company - Burnham Mine
NPDES Permit No. NN0028584

Applicant address: Consolidation Coal Company
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Facility Address: CONSOL
Section 25 T25N R16W
San Juan County
Burnham, NM

Facility Contact: Timothy Kirschbaum

I. Status of Permit

The CONSOL Burnham Mine was initially issued the National Pollutant Discharge Elimination System (NPDES) permit by EPA on November 1, 1986 and expired on November 30, 1991 (permit number NM0028584). On May 28, 1991, CONSOL filed a timely renewal of its NPDES permit for discharge of wastewater into waters of the United States. The permit has been administratively extended since its expiration date. An updated renewal application was requested and received on September 5, 2007.

II. Background

CONSOL Burnham Mine is located in Burnham, San Juan County, New Mexico, within the northeastern portion of the Navajo Nation. The Burnham Mine is currently inactive and undergoing reclamation. The mine was only active for about a year and then was shut down due to problems with transporting coal. The mine has been on standby status since 1984 and currently reclamation efforts have been underway for complete closure of the site. A diesel cleanup effort is also a component in the reclamation of Burnham Mines. There is only one outfall constructed to mitigate storm water runoff.

III. Receiving Water

The discharge outfall to receiving waters is located on the Navajo Nation. The Navajo Nation Surface Water Quality Standards (“NNSWQS”) were originally approved by the Resources Committee of the Navajo Nation Council on November 9, 1999. Amendments to the NNSWQS were approved by the Resources Committee on July 30, 2004. The Navajo Nation received “Treatment as a State” for the purposes of §106 and § 303 of the CWA. EPA has approved the Navajo Nation’s water quality standards. Therefore, this permit incorporates NNSWQS as appropriate.

Outfall 001 discharges to Brimhall Wash, which is tributary to Chaco River, which is tributary to San Juan River.

The designated uses of the receiving water (Brimhall Wash), as defined by the NNSWQS, are secondary human contact, agriculture water supply, aquatic habitat, and livestock and wildlife watering.

IV. Description of Discharge

The discharge includes storm water runoff. There have been only two discharge events since the Burnham Mine received its original permit in 1986. One discharge occurred in August 1989 and the second occurred on August 1995. The discharges were within effluent limits. A permit is being maintained in order to provide the flexibility to discharge in the event of a major precipitation event.

V. Regulatory Basis of Proposed Effluent Limits

Section 301(a) of the Clean Water Act provides that the discharge of any pollutant to waters of the United States is unlawful except in accordance with an NPDES permit. Section 402 of the Act establishes the NPDES program. The program is designed to limit the discharge of pollutants into waters of the U.S. from point sources (40 CFR 122.1 (b)(1)) through a combination of various requirements including technology-based and water quality-based effluent limitations.

Technology-based effluent limitations

Under 40 CFR Part 125.3(c)(2), Technology based treatment requirements may be imposed on a case-by-case basis under Section 402(a)(1) of the Act, to the extent that EPA promulgated effluent limitations are inapplicable, i.e., the regulation allows the permit writer to consider the appropriate technology for the category or class of point sources and any unique factors relating to the applicant.

The discharge of wastewater from coal mines is subject to 40 CFR Part 434: Coal Mining Point Source Category BPT, BAT, BCT Limitations and New Source Performance Standards. The Burnham mine has the potential to discharge wastewater from separate sources that are subject to separate subcategories of Part 434.

A. Outfall 001-Effluent Limits

This outfall meets the definition of "alkaline, mine drainage" in 40 CFR Part 434.11(c). Therefore, the proposed permit sets limits for these outfalls in accordance with the requirements of "Subpart D - Alkaline Mine Drainage" for BPT, BCT, and BAT regulations that apply to such discharges. The proposed permit sets discharge limits for these outfalls for Iron (3.5 mg/l daily average and 7.0 mg/l daily maximum), Total Suspended Solids (TSS)(35 mg/l daily average and 70 mg/l daily maximum), and pH (no less than 6.0 or greater than 9.0 standard pH units). Flow volumes, iron, TSS and pH monitoring is required during any event. These requirements are consistent with those of the previous permit.

B. Outfall 001-Sediment Control Plan.

001 - Sedimentation Pond

EPA promulgated new regulations applicable to western alkaline coal mines on January 23, 2002. The outfall meets the definition of "Subpart H- Western Alkaline Coal Mining", which applies to "alkaline mine drainage at western coal mining operations from reclamation areas, brushing and grubbing areas, topsoil stockpiling areas, and regraded areas." (40 CFR Part 434.81). In accordance with the requirements established in Subpart H; the operator is required to:

- 1) submit a site-specific Sediment Control Plan to EPA incorporating the minimum requirements of 40 CFR Part 434.82,
- 2) demonstrate that implementation of the Sediment Control Plan will result in average annual sediment yields that will not be greater than the sediment yield levels from pre-mined, undisturbed conditions.

The operator is required to submit these materials to EPA in a letter and attachments within two years upon issuance of the permit. In accordance with Subpart H, the proposed permit requires that the approved Sediment Control Plan be incorporated into the permit as an effluent limit, and requires that the permittee design, implement, and maintain the BMPs in the manner specified in the Sediment Control Plan.

These materials will become part of the Administrative Record for the proposed permit and will become available for public review. This condition will streamline the permittee towards achieving their terminal remediation endeavors.

2. Water Quality-Based Effluent Limitations

Sections 402 and 301(b)(1)(C) of the Clean Water Act require that the permit contain effluent limitations that, among other things, are necessary to meet water quality standards. 40 CFR 122.44(d) provides that an NPDES permit must contain:

“Water quality standards and State requirements: any requirements in addition to or more stringent than promulgated effluent limitations guidelines or standards under sections 301, 304, 306, 307, 318 and 405 of CWA necessary to:

(1) Achieve water quality standards established under section 303 of the CWA, including State narrative criteria for water quality.”

40 CFR 122.44 (d)(1)(i) states:

“Limitations must control all pollutants or pollutant parameters (either conventional, nonconventional, or toxic pollutants) which the Director determines are or may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above any State water quality standard, including State narrative criteria for water quality.”

40 CFR 122.44 (d) (1) (ii) states:

“When determining whether a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above a narrative or numeric criteria within a State water quality standard, the permitting authority shall use procedures which account for existing controls on point and non-point sources of pollution, the variability of the pollutant or pollutant parameter in the effluent, the sensitivity of the species to toxicity testing (when evaluating whole effluent toxicity) and where appropriate, the dilution of the effluent in the receiving water.”

40 CFR 122.44 (d)(1) (iii) states:

“When the permitting authority determines using the procedures in paragraph (d)(1)(ii) of this section, that a discharge causes, has the reasonable potential to cause or contributes to an in-stream excursion above the allowable ambient concentration of a State numeric criteria within a State water quality standard for an individual pollutant, the permit must contain effluent limits for that pollutant.”

Guidance for the determination of reasonable potential to discharge toxic pollutants is included in both the Technical Support Document for Water Quality-Based Toxics Control (TSD) - Office of Water Enforcement and Permits, U.S. EPA, dated March 1991 and the U.S.EPA NPDES Permit Writers Manual - Office of Water, U.S. EPA, dated December 1996. EPA's technical support document contains guidance for determining

the need for permit limits. In doing so, the regulatory authority must satisfy all the requirements of 40 CFR 122.44(d)(1)(ii). In determining whether the discharge causes, has the reasonable potential to cause or contributes to an excursion of a numeric or narrative water quality criterion for individual toxicants, the regulatory authority must consider a variety of factors. These factors include the following:

- Dilution in the receiving water,
- Existing data on toxic pollutants,
- Type of industry,
- History of compliance problems and toxic impacts,
- Type of receiving water and designated use.

Based on an analysis of factors at the Navajo Mine operations and projected wastewater quality data provided in the application, EPA concluded there continues to be no "reasonable potential" to cause or contribute to an exceedance of water quality standards. This is consistent with the previous permit.

The proposed permit sets general conditions based on narrative water quality standards contained in Section 203 of the NNSWQS. These standards are set forth in Section B ("General Discharge Specifications") of the permit.

VI. Monitoring Requirements

The proposed permit requires discharge data obtained during the previous three months to be summarized and reported monthly. If there is no discharge for the month, indicate "Zero Discharge". These reports are due January 28, April 28, July 28, and October 28 of each year. Duplicated signed copies of these, and all other reports required herein, shall be submitted to the Regional Administrator and the Navajo Nation EPA.

VII. Threatened and Endangered Species

EPA has determined that the discharge in compliance with this permit will have no effect on threatened or endangered species. EPA has determined that due to the frequency of the discharge and inactivity of mining operations, effluent released in accordance with this permit will have no effect on any threatened or endangered species that may be present in the area. No requirements specific to the protection of endangered species are proposed in the permit. A copy of the permit and fact sheet is being sent to the U.S. Fish and Wildlife Service for review during the public comment period.

VIII. Permit Reopener

The permit contains a reopener clause to allow for modification of the permit if reasonable

potential is demonstrated during the life of the permit.

IX. Standard Conditions

Conditions applicable to all NPDES permits are included in accordance with 40 CFR, Part 122 and Part 124.

X. Administrative Information

Public Notice (A.A.C. R18-9-A907)

The public notice is the vehicle for informing all interested parties and members of the general public of the contents of a draft NPDES permit or other significant action with respect to an NPDES permit or application. The basic intent of this requirement is to ensure that all interested parties have an opportunity to comment on significant actions of the permitting agency with respect to a permit application or permit. This permit will be public noticed in a local newspaper after a pre-notice review by the applicant and other affected agencies.

Public Comment Period (A.A.C. R18-9-A908)

Rules require that permits be public noticed in a newspaper of general circulation within the area affected by the facility or activity and provide a minimum of 30 calendar days for interested parties to respond in writing to EPA. After the closing of the public comment period, EPA is required to respond to all significant comments at the time a final permit decision is reached or at the same time a final permit is actually issued.

Public Hearing (A.A.C R18-9-A908(B))

A public hearing may be requested in writing by any interested party. The request should state the nature of the issues proposed to be raised during the hearing. A public hearing will be held if the Director determines there is a significant amount of interest expressed during the 30-day public comment period, or if significant new issues arise that were not considered during the permitting process.

XI. Additional Information

Additional information relating to this proposed permit may be obtained from the following locations:

U.S. Environmental Protection Agency, Region IX
CWA Standards & Permits Office Mail Code: WTR-5
75 Hawthorne Street
San Francisco, California 94105-3901
Telephone: (415) 972-3518

Attn: Richard Remigio or email: Remigio.Richard@EPA.gov

XII. Information Sources

While developing effluent limitations, monitoring requirements and special conditions for the draft permit, the following information sources were used:

1. Navajo Nation Surface Water Quality Standards, Navajo Nation, 2004.
2. EPA Technical Support Document for Water Quality-based Toxics Control dated March 1991.
3. U.S. EPA NPDES Basic Permit Writers Manual (December 1996).
4. 40 CFR Parts 122, 124, 131, 133, and 434.
5. NPDES permit application forms 2A and 2S, September 5, 2007.